

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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DATED: 05-10-2005

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WRIT PETITION No.10322 of 1996

Between:

A.Damodar Reddy . . .Petitioner

And

The Divisional Engineer, Electrical Operation, APSEB,
Jangaon, Warangal, and others . . .Respondents

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.10322 of 1996

ORDER:

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Proceedings of the first respondent in memo, dated 30-04-1996, and earlier memo, dated 09-04-1996, are questioned in this writ petition, and a direction is sought to declare that the promotions effected to the post of Line Inspectors, pursuant to the aforesaid memos, are illegal and arbitrary. Petitioner seeks a further declaration that this seniority as fixed in the year 1991 is final and cannot be changed after a lapse of five years.

The facts, to the extent necessary for this writ petition, are as under:

The petitioner joined the erstwhile Andhra Pradesh State Electricity Board (hereinafter referred to as "APSEB") as a Helper in the year 1970. He was promoted, initially, as a Wireman and thereafter, as a Lineman, which post he held continuously from 1980 onwards. While working as a Lineman at Kamareddy, he requested for transfer to Warangal. The second respondent, vide memo, dated 06-11-1989, while transferring the petitioner from Kamareddy to Warangal, informed him that he was not eligible for T.T.A. and joining time as the transfer was made at his request.

The provisional seniority list of Lineman cadre of the Operation division (West), Warangal, as on 31-03-1991, was issued by the second respondent, vide his memo, dated 29-07-1991, wherein, the petitioner was shown at Sl.No.28 fixing his seniority from the date of his initial appointment as a Lineman on 21-07-1980. While communicating the said seniority list, objections were called for and all the Lineman concerned were informed that if no objections were received, it would be construed that the seniority fixed therein was in order. Vide proceedings, dated 17-01-1996, the second respondent informed the first respondent that as no representation had been received regarding ranking of Linemen, the seniority list as communicated treating the rank as the one assigned to the petitioner therein, was in order.

After the Warangal division was bifurcated into Warangal and Jangaon divisions, the first respondent issued the seniority list, dated 03-07-1995, wherein, the petitioner was shown at Serial No.2.

The first respondent, issued proceedings, dated 09-04-1996, whereby, the petitioner was informed that pursuant to the instructions of the Chief Engineer, Warangal Zone, and the Superintendent Engineer, Operation, Warangal, the seniority of the petitioner, in the Lineman cadre, was revised from Serial No.2 to Serial No. 83(a). The petitioner was called upon to submit his objections to the revision of his seniority, to which, he submitted his reply on 25-04-1996 stating that his transfer from Nizamabad to Warangal was only on humanitarian grounds and that no condition was prescribed in the order of transfer that he would take the last rank in the seniority list consequent upon such transfer. He further stated that none of the other Linemen had raised any objections to the seniority list, whereunder, his

seniority was fixed at Serial No.28 and that the seniority list, finalized on 29-07-1991, could not be altered to his detriment. The first respondent, by memo dated 30-04-1996, informed the petitioner that pursuant to the instructions of the Chief Engineer and the Superintending Engineer, his seniority and rank was being revised and that his rank and seniority in the Linemen cadre, as issued in memo dated 09-04-1996, held good.

These proceedings, dated 09-04-1996 and 30-04-1996, are the subject matter of challenge in the present writ petition.

In the counter affidavit, filed by the Deputy Manager (Legal), it is stated that the petitioner, while working as a Lineman in Nizamabad District, had requested for transfer to the Operation Circle at Warangal and had submitted an application to that effect to the Chief Engineer, who, vide memo dated 17-10-1989, had issued orders transferring the petitioner to the Operation Circle of Warangal, in accordance with his request. Reference is made to Regulation 10(iv) of APSEB Service Regulations Part-III (hereinafter referred to as "Regulations") whereunder, a member of a service, who is transferred at his own request from one unit to another, shall have his seniority fixed in the latter unit, with reference to the date of his first appointment in such unit. It is contended that the petitioner, by virtue of his request transfer, was required to take the last rank in the cadre of Lineman in Warangal Circle, and as he was erroneously fixed higher in the seniority list, taking into consideration his initial appointment as a Lineman, which was contrary to the service regulations, the said memo dated

09-04-1996 and proceedings, dated 30-04-1996, had been issued. It is further stated that though it was not specifically stated in the order of transfer, Regulation 10(iv) of the Regulations would, nonetheless, apply. The seniority list is contended to have been revised at the request of two Linemen, who had sought for rectification of the seniority assigned to the petitioner, consequent upon his transfer to the Operation Circle of Warangal.

Sri V.Jogayya Sarma, learned counsel for the petitioner, would submit that once a seniority list is prepared, objections called for and thereafter, finalized, it cannot be subjected to revision, more so, after a lapse of six years. Learned counsel would submit that the order, transferring the petitioner to Warangal, makes no reference of his having to forego his seniority on transfer, and merely states that he would not be entitled to T.T.A and joining time, as the transfer was made at his request. Learned

counsel would contend that since the order of transfer makes no mention of the petitioner being required to forego his seniority, his seniority need not be revised. Learned counsel would refer to the relevant portion in the affidavit, wherein, the petitioner had contended that if he had been so informed, he would not have even sought for transfer, and would submit that in the absence of the petitioner being put on notice, prior to his transfer, the seniority list cannot be revised to his detriment. Learned counsel would place reliance on the judgments of the Supreme Court in **S.B.DOGRA v. STATE OF HIMACHAL PRADESH** and **K.A.ABDUL MAJEED v. STATE OF KERALA**.

In **S.B.Dogra** (1 supra), the Supreme Court held that Courts/Tribunals should be slow in interfering with the seniority list, which was holding the field for several years. Similarly in **Abdul Majeed** (2 supra), the Supreme Court reiterated the principle that after a long lapse of time, the seniority list could neither be reopened nor could it be altered at the request of other employees, as it is settled law that a person, whose seniority has been finalized in accordance with the procedure prescribed, is entitled to sit back with the knowledge that his seniority would not be, arbitrarily, subjected to periodic changes.

In the case on hand, the seniority of the petitioner was fixed, and the seniority list finalized, as early as in July, 1991, after having complied with the prescribed procedure of calling for objections to the draft seniority list, and finalizing the list, based on such objections. It was, therefore, not open to the respondents to seek to revise the seniority list, merely because two Linemen had submitted representations against the said seniority list after a lapse of six years. If these two Linemen intended to seek revision of the seniority list, they should have done so, when an opportunity was given to them to submit their objections, if any, to the draft seniority list published by the respondents. Having finalized the seniority list and having permitted it to operate for more than six years, there was no justification for the respondents to arbitrarily revise the seniority list only insofar as the petitioner is concerned.

Sri Samineni Kishore, learned counsel for the respondents, would, however, submit that earlier fixation of the petitioner's seniority was contrary to the statutory regulations and since the respondents were bound to comply with the statutory regulations prescribed under Regulation 10(iv), the earlier error in the seniority list

had necessarily to be corrected. Before dealing with this contention, it is necessary to refer to Regulation 10 (iv) of the Regulations, which reads as under:

“A member of a service, who is transferred at his own request from one unit to another, shall have his seniority fixed in the latter unit with reference to the date of his first appointment in that unit.”

Regulation 10(iv) of the Regulations, no doubt, provides that a member of a service, who is transferred at his own request from one unit to another, shall have his seniority fixed in the latter unit with reference to the date of his first appointment in the unit. Since, admittedly, the petitioner had sought transfer at his own request, Regulation 10(iv) of the Regulations, if applicable, would require him to take his seniority from the date, on which he was first appointed in Warangal Division.

The question, which, however, arises for consideration is whether Regulation 10(iv) of the Regulations is applicable to the linemen category to which the petitioner belongs. The APSEB Service Regulations Part-III, made in exercise of the powers conferred under Section 79 (c) of the Electricity (Supply) Act, 1948, were notified in B.P.Ms.No.89, dated 02-02-1970. Regulation I relates to the constitution, whereunder, classification of the services, under the Andhra Pradesh State Electricity Board, are specified as, in Regulation 2(a), APSEB personnel and general services and in Regulation 2(b), the Andhra Pradesh State Electricity Board Engineering Service.

The AP State Electricity Board Engineering Service is, again, categorized into eight branches, the first of which is the electricity branch, which again, has been categorized into three categories. In one of the categories, of the branches of the A.P. State Electricity Board Engineering Service, is there any reference to Lineman Posts. Since Regulation 10 (iv) of the Regulations applies only to a member of a service, to a specific query from the Court as to whether a lineman was a member of a service under these regulations, learned Standing Counsel, except stating that APSEB Service Regulations Part-III applies to Linemen also, has not been able to refer to any specific provision, whereunder a Lineman is considered as a member of the service.

Sri V.Jogaiah Sarma, learned counsel for the petitioner, on the other hand, would refer to the proceedings, dated 29-07-1991 itself in support of his submission that the petitioner's seniority was fixed in accordance with the Rule 12(a)(e) of the Non-statutory Rules applicable to O&M/construction staff. Learned counsel would submit that the very reference to Rule 12(a)(e) of the Non-statutory Rules, in the proceedings, dated 29-07-1991 and

03-07-1995, would itself indicate that APSEB Service Regulations Part-III in general and Regulation 10 (iv) of the Regulations thereof, in particular, would have no application, whatsoever, to Linemen. Learned counsel would further submit that if, indeed, the said Regulation was applicable, nothing prevented the respondents from, so, stating in the proceedings, dated 06-11-1989, whereunder, the petitioner was transferred, at his request, from Nizamabad to Warangal.

In both the proceedings, dated 06-11-1989, whereby, the petitioner was transferred from Nizamabad to Warangal, and the proceedings, dated 29-07-1991, whereunder, the provisional seniority list was communicated, there is no reference to Regulation 10(iv). Sri Samineni Kishore, learned counsel for the respondents, is also not in a position to point out as to how the said Service Regulations Part-III and Regulation 10(iv), thereof, would apply to the post of Lineman. Since no specific provision in the APSEB Service Regulations Part-III, has been brought to the notice of the Court, whereunder, the said service regulations apply to Lineman cadre also, it has necessarily to be presumed that the APSEB Service Regulations Part-III would not apply to the petitioner, who was a Lineman and belonged to O&M/construction staff. Once the APSEB Service Regulations Part-III, including Regulation 10(iv) thereof, are held not applicable to linemen category, there is no justification for the respondents to revise the seniority of the petitioner and reckon his seniority only from the date of his appointment in the Warangal Division, to which, he was transferred at his request.

The impugned proceedings, dated 09-04-1996 and 30-04-1996, whereby, the seniority of the petitioner was revised downwards is set aside. The proceedings, dated 29-07-1991, and proceedings, dated 03-07-1995, whereunder, the petitioner's seniority was determined, are restored and the petitioner would be entitled to all consequential benefits as a result, thereof.

There is considerable force in the submission of Sri V.Jogayya Sarma, learned

counsel for the petitioner, that since the petitioner has retired from service, if no time is fixed for the respondents to take necessary action pursuant to the orders of this Court, the petitioner would suffer great hardship. The respondents shall, therefore, be directed to comply with the aforesaid directions, within a period of four months from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. There shall however be no order as to costs.

(RAMESH RANGANATHAN, J)

5th October, 2005.

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